REMARKS

In the Office Action mailed on May 27, 2003, claims 16-19, 21-32, 34 and 35 were rejected. By the present Response, claims 16-18, 23-24, 27, 28 and 31 are amended and claims 36-44 are added. Upon entry of the amendments, claims 16-19, 21-32 and 34-44 will remain pending in the present application. Reconsideration and allowance of all pending claims are requested.

Claim Amendments and New Claims

In the present Response, the Applicants have amended claims 16-18, 23-24, 27, 28 and 31, and added new claims 36-44. Each of these amendments is fully supported by the present application, as discussed below.

Claim 16 has been amended to add the recitations: "wherein the presentation is transmitted in a real time mode or in a historical mode, and" along with "only when the presentation is transmitted in real time mode." These amendments do not add any new matter and are supported by the specification. Specifically, the present application describes that data is incorporated into a presentation page that is viewable on a browser. *See* Application, page 3, line 31 to page 4, line 7. Applications may utilize the data to form a data presentation at a remote monitoring station 14. *See* Application, page 7, line 19 to page 8, line 10. The data presentation may be defined in various manners, such as depending on the type of data presented, the most useful or convenient form of presentation, and the amount of data to be transmitted. *See* Application, page 10, lines 10-30. As one factor, the modes for the transfer of data may be defined in real time or historical mode. *See* Application, Fig. 5; page 14, lines 20-25. Once displayed, updated data, which may only be newly available data, is transmitted and displayed. *See* Application, Fig. 5; page 15, lines 1-11. Accordingly, in view of these cited passages, it is clear that the recitations are fully supported by the application. Therefore, Applicants respectfully request entry of the amendments to claim 16.

Depending from independent claim 16, claims 17 and 18 have been amended to correct clerical errors. In light of these amendments, Applicants submit that claims 17 and 18 do not include any new matter. Accordingly, in view of these clerical corrections, Applicants respectfully request entry of the amendments to claims 17 and 18.

Also, depending from independent claim 16, Applicants have added claims 36, 37 and 38. The new dependent claims do not add any new matter and are supported by the specification. Claim 36 is described in the specification on page 14 lines 20-25. Claim 37 is described in the specification at page 14, line 27 through page 15, line 1. Claim 38 is described in the specification at page 15, lines 13-17. Accordingly, Applicants respectfully request allowance of claims 36, 37, and 38.

Furthermore, Applicants have amended independent claim 23 to replace "network presentation" with "updated interface page." Also, Applicants added the recitation "wherein the updated interface page is transmitted in a real time mode or in a historical mode." These amendments do not add any new matter and are fully supported by the specification. As discussed above with regard to independent claim 16, the present application describes that data is incorporated into a presentation page that are viewable via a browser. *See* Application, page 3, line 31 to page 4, line 7. In the application, the term "page" includes a user interface display or similar arrangement which can be viewed by a user of a remote monitoring station. *See* Application, page 8, lines 15-26. Again, as noted above, the modes for the transfer of data may be defined in a real time or historical mode. *See* Application, Fig. 5; page 14, lines 20-25. Accordingly, in view of these cited passages, it is clear that the recitations are fully supported by the application. Therefore, Applicants respectfully request entry of the amendments to claim 23.

Depending from independent claim 23, claims 24 and 27 have also been amended. Claim 24 has been amended to correct a clerical error, while claim 27 has been amended to add the phrase "when the interface page is transmitted in real time mode." The amendment to claim 27 is similar to the amendment discussed above with regard to independent claim 16. Specifically, in the specification, updated data, which may only be newly available data, is transmitted and displayed. *See* Application, Fig. 5; page 15, lines 1-11. As the added recitation to claims 27 and the correction of the clerical error are clearly supported by the application, Applicants respectfully request entry of the amendments to claims 24 and 27.

In addition, Applicants have added claims 39, 40 and 41 to depend from independent claim 23. The new dependent claims do not add any new matter and are supported by the specification. Claim 39 is described in the specification at page 14, lines 20-25. Claim 40 is described in the specification at page 14, line 27 through page 15, line 1. Claim 41 is described in the specification at page 15, lines 13-17. As such, Applicants respectfully request allowance of claims 39, 40, and 41.

Moreover, independent claim 28 has been amended to add the recitations: "wherein the presentation is transmitted in a real time mode or in a historical mode, and" along with "means for retransmitting the presentation to the general purpose display station only when the presentation is transmitted in real time mode." As noted above with regard to claim 16, these amendments do not add any new matter and are supported in the specification. Specifically, the present application describes that data is incorporated into a presentation that is viewable at a monitoring station 14. *See* Application, page 3, line 31 to page 4, line 7; page 7, line 19 to page 8, line 10. The presentation may be defined in various manners, which may include real time or historical modes. *See* Application, Fig. 5; page 14, lines 20-25. In retransmitting the presentation, updated data, which may only be newly available data, is transmitted and displayed for a

user, as noted above. *See* Application, Fig. 5; page 15, lines 1-11. Accordingly, in view of these cited passages, it is clear that the recitations are fully supported by the application. Therefore, Applicants respectfully request entry of the amendments to independent claim 28.

Depending from independent claim 28, claim 31 has been amended to add the phrase "when the presentation is transmitted in real time mode." Similar to the discussion relating to the amendment of claim 27, updated data from the real time mode may be transmitted and displayed. *See* Application, Fig. 5; page 15, lines 1-11. As the added recitation is clearly supported by the application, Applicants respectfully request entry of the amendment to claim 31.

Also, Applicants have added claims 42, 43 and 44, which depend from independent claim 28. The new dependent claims do not add any new matter to the application and are supported by the specification. Claim 42 is described in the specification at page 14, lines 20-25. Claim 43 is described in the specification at page 14, line 27 through page 15, line 1. Claim 44 is described in the specification at page 15, lines 13-17. Applicants respectfully request entry of claims 42, 43 and 44.

Rejections under 35 U.S.C. § 102

The Examiner rejected claims 28-32 and 34 under 35 U.S.C. § 102(e) as being anticipated by Frid et al. (U.S. Patent No. 5,857,967). Applicants respectfully traverse the rejection.

Anticipation under section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference. *In re*

Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper

rejection under section 102, a single reference must teach each and every element or step

of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984).

Thus, if a single claimed element is not present, the rejection cannot stand.

        Claim 28 recites:

> A system for monitoring a fetal condition, the
> system comprising:
>   means for detecting a fetal parameter of interest and
> for generating a fetal condition signal representative
> thereof;
>   means for storing the fetal condition signal;
>   means for defining a general purpose network
> presentation including data representative of the fetal
> condition signal;
>   means for transmitting the presentation to a general
> purpose display station via a configurable network link
> upon receipt of a command from the display station,
> wherein the presentation is transmitted in a real time mode
> or in a historical mode, and wherein the display station
> comprises a general purpose computer and a browser that
> operates to display the network presentation;
>   means for updating the presentation to include
> updated data representative of the fetal condition; and
>   means for retransmitting the presentation to the
> general purpose display station only when the presentation
> is transmitted in real time mode.

        In contrast to the recited claim, the Frid et al. reference describes problems

associated with devices using proprietary interfaces and not being well suited to interact

with out-of-hospital or out-of-clinic environments. *See* Frid et al., col. 1, lines 29-49. To

address these problems, the Frid et al. reference discloses a web browser 40 that uses

communication paths 22 and 23 to access measurement data and other medical

information from a healthcare device 10. *See* Frid et al., col. 3, lines 9-22. The reference

further describes the healthcare device 10 as a portable electrocardiogram recorder having

a sensing mechanism for retaining electrocardiogram readings. *See* Frid et al., col. 4, lines 25-30. A web server 14 in the healthcare device 10 provides access to electrocardiogram data, which is transmitted to the web browser 40. *See* Frid et al., col. 4, lines 29-36. As either stored or real time data, an HTML file 46, which includes the electrocardiogram data, is transmitted to a requesting web client in response to an HTTP command. *See* Frid et al., col. 5, line 59 – col. 6, line 3.

The Frid et al. reference fails to anticipate all of the recited features of independent claim 28. For instance, the Frid et al. reference fails to disclose "means for detecting a fetal parameter of interest and for generating a fetal condition signal representative thereof," as recited in claim 28. Also, the Frid et al. reference fails to disclose that the "means for updating the presentation to include updated data representative of the fetal condition" and "means for retransmitting the presentation to the general purpose display station only when the presentation is transmitted in real time mode," as recited in claim 28. Hence, to the extent that the Examiner has relied on the Frid et al. reference to disclose all of the recited features, the rejection cannot stand.

Specifically, in the rejection of claim 28 in the Office Action mailed on May 27, 2003, the Examiner admitted, "the device is not stated as being used for a fetal ecg system." Indeed, the Frid et al. reference is devoid of any suggestion or teachings relating to *detecting a fetal parameter of interest* or *generating a fetal condition signal*. The reference simply describes providing medical information that is accessible from the healthcare device 10, which may be a portable electrocardiograph recorder. *See* Frid et al., col. 4, lines 29-30. As the reference is devoid of any mention of the *fetal parameter of interest* or a *fetal condition signal*, the reference fails to disclose the recited features.

Furthermore, the Frid et al. reference fails to disclose "means for updating the presentation to include updated data representative of the fetal condition" or "means for

retransmitting the presentation to the general purpose display station only when the presentation is transmitted in real time mode," as recited in claim 28. In the rejection, the Examiner asserted that the Frid et al. reference discloses updating the displayed page in real time. However, the Frid et al. reference merely describes providing real time electrocardiograph data to an external web browser using HTML and HTTP protocols. *See* Frid et al., col. 4, lines 34-36. In fact, the reference discloses that a healthcare worker enters a URL corresponding to the healthcare device 10 into the web browser 40 to transfer an HTTP command to access the medical information from the healthcare device 10. *See* Frid et al., col. 3, lines 64 – col. 4, line 4. Once the HTTP command is received, the web server 14 transfers the HTML file 48 containing the medical information 60 to the web browser 40, which is the requesting web client. *See* Frid et al., col. 4, lines 30-37; col. 5, line 58 - col. 6, line 3. The HTML file 46 is generated either in response to an HTTP command from a requesting web client or prior to a request of an HTTP command from a requesting web client. *See* Frid et al., col. 6, lines 1-9. Thus, the reference does not disclose *updating* or *retransmitting the presentation*, but simply providing an HTML file 48 in response to an HTTP command from a requesting web client. *See* Frid et al., col. 6, lines 1-9. As such, the Frid et al. reference does not disclose "means for updating the presentation to include updated data representative of the fetal condition" or "means for retransmitting the presentation to the general purpose display station only when the presentation is transmitted in real time mode," as recited in claim 28.

Accordingly, as the Frid et al. reference fails to anticipate all of the recited features, independent claim 28 and dependent claims are believed to be patentable over the Frid et al. reference. For these reasons, Applicants respectfully request the Examiner withdraw the rejection and indicate the allowability of claims 28-32 and 34.

Rejections under 35 U.S.C § 103

The Examiner rejected claims 16-19, 21-32 and 35 under 35 U.S.C. § 103(a) as being unpatentable over Gat (U.S. Patent No. 5,954,663) in view of Frid et al. (U.S. Patent No. 5,857,967). Additionally, the Examiner rejected claims 28-32 and 34 under 35 U.S.C. § 103(a) as being unpatentable over Frid et al. (U.S. Patent No. 5,857,967) in view of Gat (U.S. Patent No. 5,954,663). Applicants respectfully traverse these rejections.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

As the Examiner rejected each of the independent claims 16, 23 and 28 under the same combination, Applicants will discuss these claims together. The amended

independent claims 16 and 28 recite, *inter alia*, *"updating the presentation to include updated data representative of the fetal condition"* and *"retransmitting the presentation to the general purpose display station only when the presentation is transmitted in real time mode."* The amended independent claim 23 recites, *inter alia*, *"updating the interface page to include the parameter data"* and *"transmitting the updated interface page from the server to the client station for display via a general purpose computer and a browser that operates to display the updated interface page, and wherein the updated interface page is transmitted in a real time mode or in a historical mode."*

In contrast to the recited features, the Gat reference describes a system for monitoring the condition of a fetus. *See* Gat, col. 1, lines 6-8. In the Gat system, a single central processing unit 16 handles multiple fetal monitoring sensors in a closed system. *See* Gat, Figs. 1, 6, and 7; col. 6, lines 5-17. The central processing unit 16 is connected to a monitoring station 18 and an archiving system 28. The monitoring station 18 is used to monitor the different patients. *See* Gat, col. 6, line 66 – col. 7, line 7. The central processing unit 16 archives all data being processed at the archival system 28 for later retrieval. *See* Gat, col. 7, lines 9-18.

In the rejection, while the Examiner does not cite specific passages for the recited features, the Examiner appears to assert that the Frid et al. reference discloses all of the recited features with the exception of the system's use with "expecting mothers." However, Applicants contend that the Frid et al. and the Gat references, alone or in combination, do not disclose all of the recited features of independent claims 16, 23 and 28 noted above. Hence, to the extent the Examiner has relied on the Frid et al. and Gat references, the rejection cannot stand.

As noted above, the Frid et al. reference fails to disclose *updating* and *retransmitting the presentation* or *updated interface page* to a *display station*. Rather, the

reference merely describes providing real time electrocardiograph data to an external web browser using HTML and HTTP protocols. *See* Frid et al., col. 4, lines 34-36. The data is actually accessed by a healthcare worker entering an HTTP command to access the medical information 60 from the healthcare device 10. *See* Frid et al., col. 3, lines 64 – col. 4, line 4. Once the HTTP command is received, the web server 14 transfers the HTML file 48 containing the medical information 60 to the web browser 40, which is the requesting web client. *See* Frid et al., col. 4, lines 30-37; col. 5, line 58 - col. 6, line 3. Although this may be recent or real time data, the reference never suggest that the data or presentation is *updated* or *retransmitted* as claimed. Thus, the reference does not disclose or teach *updating* or *retransmitting the presentation*, but simply provides an HTML file 48 in response to the HTTP command from a requesting web client. *See* Frid et al., col. 6, lines 1-9. As such, the Frid et al. reference does not disclose the recited features of independent claims 16, 23 and 28.

The Gat reference fails to cure the deficiencies of the Frid et al. reference. In the Gat reference, the central processing unit 16 processes signals from the fetal monitors 12. *See* Gat, col. 6, lines 5-10. Any and all of the data being processed by the central processing unit 16 is archived and stored in an archiving unit for later retrieval. *See* Gat, col. 7, lines 13-15. While a modem communicator unit 308 may connect a computer system 310 to receive CTG data, the reference *does not disclose* updating the data. *See* Gat, col. 12, lines 39-47. Indeed, the reference is devoid of any suggestion or teaching relating to *updating* or *retransmitting the presentation*. Clearly, as the reference is devoid of any teachings that relate to *updating* or *retransmitting the presentation,* it cannot obviate the deficiencies of Frid et al. As such, the Frid et al. and the Gat references fail to teach or suggest the recited features.

Moreover, the Examiner appears to assert that certain features are "well known" in the art. Specifically, the Examiner stated that: "[s]uch real time implementations on

the internet have been well known prior to applicant's effective filing data" and that "[i]t was also well known at the time the invention to update the page by refreshing it and retransmitting new data that is not updated to the client in real time." From these statements, Applicants assume that the Examiner asserts that various features of the present application are "well known in the art." Applicants, in accordance with M.P.E.P. § 2144.03, seasonably traverse and challenge the Examiner's apparent use of Official Notice. Specifically, Applicants respectfully request objective evidence, such as an additional reference, in support of the Examiner's position if the rejection is to be maintained. If the Examiner finds an additional reference and applies it in combination with the presently cited references, Applicants further request that the Examiner specifically identify the portions of the newly cited reference that discloses the allegedly "well known" elements of the recited claim, or withdraw the rejection.

Because the references fail to disclose *all* of the claimed elements, the references fail to provide support for a *prima facie* case of obviousness. Therefore, independent claims 16, 23 and 28, and respective dependent claims are believed to be patentable over Gat and Frid et al.
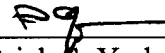
Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims 16-19, 21-32 and 34-44. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

General Authorization for Extensions of Time

In accordance with 37 C.F.R. § 1.136, Applicants hereby provide a general authorization to treat this and any future reply requiring an extension of time as incorporating a request therefor. Furthermore, Applicants authorize the Commissioner to charge the appropriate fee for any extension of time to Deposit Account No. 50-2401; Order No. 31-PN-6223/YOD (GEMS:0055-1).

Respectfully submitted,

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